

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**BRANDON McDUFFIE,**

**Plaintiff,**

**v.**

**Case No. 23-CV-214**

**JAMES ELSINGER, *et al.*,**

**Defendants.**

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**ORDER**

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On March 22, 2023, the defendants, James Elsinger, Jeremey Josephs, and William Swiekatowski, filed a motion for partial summary judgment on the grounds that *pro se* plaintiff Brandon McDuffie failed to exhaust his administrative remedies for all claims except for the Eighth Amendment inadequate medical care claim against James Elsinger. (ECF No. 23) Also on March 22, 2023, the court issued a notice and order informing McDuffie that he had until April 21, 2023, to file a response to the defendants' summary judgment motion. (ECF No. 27.) The court cautioned McDuffie that, if by that date he did not respond to the motion or file a letter explaining why he was unable to do so, the court would accept all facts asserted by the defendants as undisputed.

The deadline has passed and McDuffie has not filed a response to the defendants' motion. On April 28, 2023, the defendants filed a motion to dismiss the claims for failing to respond to their motion. (ECF NO. 28.) The court has reviewed

the defendants' motion, brief in support, and the undisputed facts, *see Fed. R. Civ. P. 56(e)(2)*, and concludes that the defendants are entitled to partial summary judgment on exhaustion grounds. The court will grant the defendants' motions. All claims except for the Eighth Amendment inadequate medical care claim against James Elsinger are dismissed without prejudice. *See Chambers v. Sood*, 959 F.3d 979, 984 (7th Cir. 2020). Because there are no remaining claims against Josephs and Swiekatowski, they are also dismissed.

**IT IS THEREFORE ORDERED** that the defendants' motion for partial summary judgment on exhaustion grounds (ECF No. 23) is **GRANTED**.

**IT IS FURTHER ORDERED** that the defendants' motion to dismiss the relevant claims as described in this order (ECF No. 28) is **GRANTED**. Those claims are **DISMISSED without prejudice**.

**IT IS FURTHER ORDERED** that Jeremy Josephs and Williams Swiekatowski are **DISMISSED**.

Dated at Milwaukee, Wisconsin this 5th day of May, 2023.

BY THE COURT



WILLIAM E. DUFFIN  
United States Magistrate Judge